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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 December 2010

on authenticity, fitness checking and recirculation of euro banknotes

(CON/2010/90)

Introduction and legal basis

On 17 November 2010, the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on a draft CBM Directive No. 10 on the Authenticity and Fitness Checking and Recirculation of Euro Banknotes issued under the Central Bank of Malta Act[1] (hereinafter the 'draft Directive').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the first, second and third indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft Directive concerns currency matters, means of payment and the Central Bank of Malta. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft CBM Directive

1.1 Under Article 5(3) of the Central Bank of Malta Act, read in conjunction with Article 5(1)(e), the CBM is empowered to issue directives to provide for the circulation of euro banknotes. The draft Directive will be a binding legal act, transposing Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes[3] and will replace the CBM's current Directive No. 10 on the Banknote Recycling Framework (BRF).

1.2 The draft Directive lays down measures on the authenticity, fitness checking and recirculation of euro banknotes and will enter into force on 1 January 2011.

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1 Chapter 2014 of the Laws of Malta

2 OJ L 189, 3.7.1998, p. 42.

3 OJ L 267, 9.10.2010, p. 1.

2. General observations

2.1 The common rules and procedures on authenticity, fitness checking and recirculation of euro banknotes laid down in the draft Directive impose obligations on cash handlers and seek to safeguard the integrity of euro banknotes as a means of payment. The ECB welcomes the draft Directive and is confident that its provisions will ensure the preservation of euro banknotes in circulation and will result in the maintenance of public confidence in euro banknotes.

2.2 Council Decision 98/415 does not contain provisions under which national authorities are required to consult the ECB on implementing measures. Subject to the specific observations in Section 3 below, the ECB notes that the draft Directive generally constitutes a faithful reproduction of the provisions of Decision ECB/2010/14 and introduces no new points. Also, as Decision ECB/2010/14 applies to cash handlers by virtue of Article 6(1) of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting[4], which refers to ECB procedures for checking euro banknotes, there is no strict need to implement Decision ECB 2010/14 into Maltese law. It is also acknowledged that the draft Directive may contribute to making cash handlers in Malta comply with the rules and procedures laid down in the Decision ECB/2010/14.

3. Specific observations

3.1 Paragraph 37 of the draft Directive provides that the draft Directive will enter into force on 1 January 2011, with the reporting obligation laid down in paragraph 34 to take effect from 1 January 2012. The reporting obligations of credit institutions and professional cash handlers, defined as 'intermediaries' in the BRF, are, at present, dealt with in paragraph 16 of the BRF. The wording of paragraph 37 of the draft Directive should be reconsidered given that it may create some ambiguity as it could be inferred that categories of cash handlers currently within the scope of the BRF would, in future, not be obliged to report to the CBM until 1 January 2012.

3.2 The ECB also notes that paragraph 11 of the draft Directive entrusts responsibility for the testing of banknote handling machines to the CBM, thereby appearing to limit the scope of Article 3(3) of Decision ECB/2010/14. Therefore, paragraph 11 of the draft Directive should be amended accordingly.

3.3 Furthermore, paragraph 12 of the draft Directive provides that euro banknotes delivered directly to a cash handler by the CBM do not require authenticity and fitness checks prior to recirculation. The ECB also notes a discrepancy here with Article 3(4) of Decision ECB/2010/14 which provides that authenticity and fitness checks are not required in the case of euro banknotes that have been delivered directly to a cash handler by a national central bank. The draft provision seems to limit

4 OJ L 181, 4.7.2001, p. 6.

the scope of the equivalent provisions of Decision ECB/2010/14 and the ECB is of the opinion that the relevant provisions of the draft CBM Directive should be amended accordingly.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 13 December 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET